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09/777,420	02/06/2001	Sean B. Weatherill	GRTSTF.011A	6959

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EXAMINER

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ART UNIT PAPER NUMBER

3654

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/777,420
Filing Date: February 06, 2001
Appellant(s): WEATHERILL ET AL.

MAILED

JUL 26 2004

GROUP 3600

Sanjivpal S. Gill
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/15/04.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The appellant's statement in the brief that certain claims stand or fall together is not agreed with because appellant separately sets forth arguments for claim 27. Therefore, claims 1-23, 25, and 28 are grouped together as Group I and claim 27 is in a group by itself in Group II.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(9) Prior Art of Record

2,403,277	Hall	7-1946
2,286,904	Weald	6-1942

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-23, 25, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall (US 2403277).

Hall discloses substantially all the claimed features including a housing 1, a rotatable reel for hose 31, and an access panel 2 with an aperture 17 for the hose to pass through. That the exterior surface of the access panel has a facial indicia to resemble one of an animal, human-like character, or alien creature (as recited in claims 1, 4-7, 9-19, 21, and 25) would have been an obvious matter of ornamental design choice to a person having ordinary skill in the art based on ornamental preference, providing no new or unexpected results. In other words, the ornamental design of the exterior surface of the access panel would have been an obvious matter of ornamental design choice to a person having ordinary skill in the art based on ornamental preference, providing no new or unexpected results. Hinged housing panels, covers, doors, etc., are old and well known in the art; therefore, to make the access panel

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hingedly connected to the housing would have been obvious to a person having ordinary skill in the art to facilitate opening and closing.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hall (US 2403277) in view of Ewald (US 2286904).

Ewald discloses another similar apparatus in which the housing is almost spherical; to make the housing of Hall generally spherical as taught by Ewald would have been obvious to a person having ordinary skill in the art for aesthetic purposes and to eliminate sharp corners to reduce injuries.

(11) Response to Argument

Group I

As noted in the rejection above, Hall discloses substantially all the claimed structural features; what is missing is a facial indicia, i.e. a surface ornamental feature, that resembles one of an animal, human-like character, or alien creature. The facial indicia is considered an ornamental feature because it does not affect the way the apparatus of Hall works or how it is used. And since the number of ornamental designs that can be applied is limitless, a particular ornamental design can only be a personal preference. (For all the examiner knows, the facial indicia inherent in the device of Hall could very well resemble that of an alien creature, since the examiner has never seen an alien creature.)

Appellant has not provided any argument that the particular claimed ornamental design, i.e. a facial indicia that resembles one of an animal, human-like character, or alien creature, is significant to the operation of the apparatus or to the way it is used or is anything more than one of numerous ornamental designs a person of ordinary skill in the art could choose as an obvious matter of ornamental design.

It appears more appropriate that the claimed invention be filed as a Design application rather than a Utility application. MPEP Section 1502 under Chapter 1500 Design Patents states:

"The design for an article consists of the visual characteristics embodied in or applied to an article.

Since a design is manifested in appearance, the subject matter of a design patent application may relate to the configuration or shape of an article, to the surface ornamentation applied to an article, or to the combination of configuration and surface ornamentation."

The design of an article consists of the visual characteristics or aspect displayed by the article. It is the appearance presented by the article which creates an impression through the eye upon the mind of the observer.

Furthermore, MPEP Section 1502.01 states:

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"In general terms, a "utility patent" protects the way an article is used and works (35 U.S.C. 101), while a "design patent" protects the way an article looks (35 U.S.C. 171). The ornamental appearance for an article includes its shape/configuration or surface ornamentation upon the article, or both."

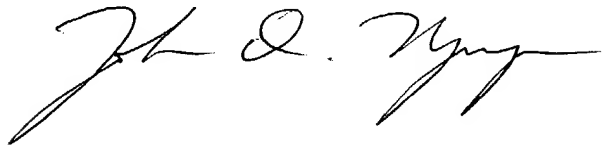
As is clear from the rejection above and from appellant's arguments, the missing feature is the facial indicia, i.e. a surface ornamentation. And clearly, according to MPEP Chapter 1500, the "facial indicia" feature is basically "the way an article looks", not "the way an article is used and works". And since this application is for a utility patent, the facial indicia is deemed to be an obvious matter of ornamental design choice to a person having ordinary skill in the art based on ornamental preference, as set forth in the rejection above.

Group II

The examiner's response in Group I is incorporated by reference.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

John Q. Nguyen
Primary Examiner
Art Unit 3654

JN

July 22, 2004

Conferees

KM

JJ



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